Supreme Court
FILED
FEB 17 2003
OFFICE OF THE CLERK

No. 02-241

In The
Supreme Court of the United States

BARBARA GRUTTER,

Petitioner,

v.

LEE BOLLINGER, et al.,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

BRIEF OF LATINO ORGANIZATIONS AS AMICI CURIAE IN SUPPORT OF RESPONDENTS

ANTONIA HERNANDEZ
(Counsel of Record)
THOMAS A. SAENZ
VICTOR VIRAMONTES
MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATIONAL FUND
634 S. Spring St., 11th Fl.
Los Angeles, CA 90014
Ph: (213) 629-2512

FOSTER MAER
PUERTO RICAN LEGAL DEFENSE AND EDUCATION FUND
99 Hudson Street, 14th Fl.
New York, NY 10013
Ph: (212) 219-3360

Attorneys for Amici Curiae

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

BEST AVAILABLE COPY

TABLE OF CONTENTS

	Page
INTEREST OF *AMICI*	1
SUMMARY OF ARGUMENT	1
ARGUMENT	3
I. LATINOS HAVE A DISTINCT IDENTITY SHAPED BY HISTORICAL EXPERIENCE	3
A. The Latino Community Has Historically and Continuously Been Seen as Different from the Majority White Community	5
1. The Two Largest Latino Subgroups Were Forcibly Introduced to the United States	8
2. The Legal System Viewed Latinos as Distinct From Whites	10
3. The U.S. Census Has Long Recognized the Latino Community As Distinct From Other Racial Groups	13
4. Voting Shows a Distinct Latino Community	15
5. Society Perceives Latinos as Distinct	16
B. Because of Group Identity, Latino Lawyers are More Likely to Serve the Latino Population	19
C. The Latino Community Shares Common Characteristics of Value to Law School Diversity	20
II. PUBLIC EDUCATION BEARS A SPECIAL RESPONSIBILITY TO ERADICATE SOCIETAL DISCRIMINATION	22

TABLE OF CONTENTS – Continued

Page

III. MICHIGAN LAW SCHOOL CONTINUES TO DISCRIMINATE AGAINST LATINO APPLICANTS 25

CONCLUSION 29

TABLE OF AUTHORITIES

Page

CASES

Ambach v. Norwick, 411 U.S. 68 (1976) 23, 24

Arizonans for Official English v. Arizona, 520 U.S. 43 (1997) 20

Brown v. Board of Education, 347 U.S. 483 (1954) 7, 21, 22

Carrasco v. State, 95 S.W.2d 433 (Tex. Crim. App. 1936) 11

El Rescate Legal Servs. v. Executive Office of Immig. Review, 959 F.2d 742 (9th Cir. 1991) 20

Garcia v. Gardner's Nurseries, Inc., 585 F. Supp. 369 (D. Conn. 1984) 13

Garcia v. Gloor, 618 F.2d 264 (5th Cir. 1980) 20

Garcia v. Spun Steak Co., 998 F.2d 1480 (9th Cir. 1993) 20

Grutter v. Bollinger, 288 F.3d 732 (6th Cir. 2002) 1, 25, 26, 27, 28

Hernandez v. New York, 500 U.S. 352 (1991) 20

Hernandez v. State, 251 S.W.2d 531 (Tex. Crim. App. 1952) 11

Hernandez v. Texas, 347 U.S. 475 (1954) 7, 10, 12

Lau v. Nichols, 414 U.S. 563 (1974) 20

Mendez v. Westminster School District, 64 F. Supp. 544 (S.D. Cal. 1946) 12

Norris v. Alabama, 294 U.S. 587 (1935) 11

Plyler v. Doe, 457 U.S. 202 (1982) 23, 24

Ramirez v. Plough, Inc., 25 Cal. Rptr. 2d 97 (Cal. 1993) 20

TABLE OF AUTHORITIES – Continued

Page

Regents of the Univ. of Cal. v. Bakke, 438 U.S. 265 (1978) 4

In re Rodriguez, 81 F. 349 (W.D. Tex. 1897) 10

San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1 (1973) 22

Scott v. Sandford, 60 U.S. (19 How.) 393 (1857) 10

STATUTES, RULES AND REGULATIONS

34 C.F.R. § 100.3(b)(2) 29

Cal. Educ. Code § 8003 12

Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009 (1996) 21

Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (1996) 21

MISCELLANEOUS

1990 Census 14

2000 Census 9, 14, 16, 19

S. Rep. No. 94-295 (1975) 15

Arnoldo De Leon, *The Tejano Community, 1836-1900* (1982) 10

Bureau of the Census, *Fifteenth Census of the United States, Population Bulletin, Second Series, U.S. Summary* (1931) 13

Bureau of the Census, *Sixteenth Census of the United States, Population, Part I* (1943) 14

TABLE OF AUTHORITIES – Continued

Page

California Commission on Access to Justice, *The Path to Equal Justice in California* (2002) 19

Carey McWilliams, *North From Mexico* (1948) 10

Civil Rights Forum, *When Being Number One Is Not Enough: The Impact of Advertising Practices On Minority-Owned & Minority-Formatted Broadcast Stations* (1999) 17

Daria Roithmayr, *Barriers to Entry: A Market Lock-In Model of Discrimination*, 86 Va. L. Rev. 727 (2000) 25

Ernest Gruening, *Mexico and Its Heritage* (1928) 9

Frederick Merk, *Manifest Destiny and Mission in American History* (1963) 9

Gary A. Greenfield & Don B. Kates, *Mexican Americans, Racial Discrimination and the Civil Rights Act of 1866*, 63 Cal. L. Rev. 662 (1975) 9

Harry P. Pachon, et al., *Missing in Action: Latinos In and Out of Hollywood* (1999) 17

Jose A. Cabranes, *Citizenship and the American Empire* (1975) 13

Kaiser Family Foundation, Pew Hispanic Center, *2002 National Survey of Latinos* (2002) 18

Lani Guinier, *An Empirical Study Confirmative Action*, 25 Law & Soc. Inquiry 565 (2000) 29

Leo Grebler, Joan C. Moore & Ralph C. Guzman, *The Mexican People* (1970) 14

Linda A. Jackson, *Stereotypes, Emotion, Behaviors, and Overall Attitudes Toward Hispanics by Anglos* (1995) 17, 18

TABLE OF AUTHORITIES – Continued

Page

Los Angeles Times Poll – California Exit Poll, Nov. 8, 1994 16

Los Angeles Times Poll – General Election Exit Poll, Nov. 5, 1996 16

Los Angeles Times Poll – California Primary Election, June 2, 1998 16

Louis DeSipio, *Talking Back to Television: Latinos Discuss How Television Portrays Them and the Quality of Programming Options* (1998) 17

Louis DeSipio, Lisa Navarette & Charles Kamasaki, *Out of the Picture: Hispanics in the Media* (1994) 16

McCrae A. Parker, et al., *Fall Colors 2001-02 Prime Time Diversity Report* (2002) 16

Mexican and Central American Population and U.S. Immigration Policy (Frank Bean, Jurgen Schmandt, and Sidney Weintraub eds., 1989) 7

Michael A. Fletcher, *Latinos See Bias in Elgin's Fight Against Blight; Tensions Rise Over Crackdown on Crowded Housing*, Washington Post, May 29, 2000 18

Miguel A. Mendez & Leo P. Martinez, *Toward A Statistical Profile of Latina/os in the Legal Profession*, 13 Berkeley La Raza L.J. 59 (2002) 19

Reginald Horsman, *Race and Manifest Destiny* (1981) 9

Richard O. Lempert, David L. Chambers & Terry K. Adams, *Michigan's Minority Graduates in Practice: The River Runs Through Law School*, 25 Law & Soc. Inquiry 395 (2000) 19

TABLE OF AUTHORITIES – Continued

Page

The Latino Coalition, *2001 Latino Poll* (2001) 18

Tom W. Smith, *Intergroup Relations in a Diverse America* (2001) 17, 18

Walter LaFeber, *Inevitable Revolutions, The United States in Central America* (1993) 7

William C. Kidder, Note, *Does the LSAT Mirror or Magnify Racial and Ethnic Differences in Educational Attainment?: A Study of Equally Achieving "Elite" College Students*, 89 Cal. L. Rev. 1055 (2001) 25, 26

Yuen J. Huo and Tom Tyler, *How Different Ethnic Groups React to Legal Authority* (2000) 18

INTEREST OF *AMICI*

Amici are organizations with roots in the Latino community and whose missions include serving the interests of the Latino community. Some, like the Mexican American Legal Defense and Educational Fund (MALDEF), are national organizations, while others are local. These Latino organizations have concluded that preserving race-conscious affirmative action in education is critical to the Latino community's advancement. Accordingly, all have an interest in these proceedings. The individual statements of interest of all *amici* appear in the Appendix.

This brief urges affirmance of the decision of the United States Court of Appeals for the Sixth Circuit, sitting en banc, reported at 288 F.3d 732 (6th Cir. 2002).[1]

SUMMARY OF ARGUMENT

Our nation's peoples are of many backgrounds. As we seek to achieve a land of true equal opportunity, our shared vision – of a nation where folk of differing ethnicities strive, in an atmosphere of fairness untainted by discrimination, to achieve their dreams – has become palpable for many ethnic groups that faced real, and sometimes quite virulent, prejudice when they first immigrated nearly a century and more ago. Yet, for other groups, the effects and continuing reality of bias and discrimination have shown a dogged persistence. Even

---

[1] Letters from parties consenting to filing of this brief have been filed with the Clerk of the Court. Counsel for a party did not author this brief in whole or in part. No person or entity, other than *amici*, their members, or their counsel, made a monetary contribution to the preparation or submission of this brief.

though these minority groups have a long history in this nation – longer than many groups that have seen the animosity toward them largely dissipate – they continue to be viewed as distinct from the white multi-ethnic majority and to experience recurrent discrimination as a result of their perceived difference. Latinos, present in significant numbers in this country since at least the mid-nineteenth century, are, like African Americans and Native Americans, among these minority groups.

The marks of these groups' persistent treatment as different lie in their significant underrepresentation in the ranks of the educated, powerful, and wealthy. For example, Latinos – despite their longevity in this nation – continue to show the lowest college-going rates and the lowest socioeconomic profile. This experience of ongoing exclusion does not result from any group choice, nor from any group deficit in potential or ability. Those who suggest otherwise betray their faithlessness in our shared vision of a nation built by and for equals. Rather, this exclusion stems from persistent discrimination and treatment as different. This has resulted, unsurprisingly, in the development of a different experience within the groups that have faced such persistent ostracism. Thus, members of these groups, such as Latinos, bring a perspective shaped by their status as part of a group so marked. While this shared and race-influenced perspective does not result in unanimous opinion or viewpoint on any issue, it does mean that Latinos have an undeniable contribution to make to the diversity of experience sought by many institutions, such as the University of Michigan. Because this special perspective lies in an experience shaped by racial/ethnic difference and the broader community's cognizance and reinforcement of that difference, it can only be fully incorporated by considering race. Capturing

the true diversity of our nation requires some reasonable amount of race-consciousness.

These communities' different experience, shaped by exclusion and ostracism, also means that many purportedly neutral criteria for determining merit or potential do not show the same reliability when applied to minority groups like Latinos, African Americans, and Native Americans. Yet, universities continue to adhere to these criteria, even where they show little correlation with future success. It is appropriate for a university that chooses to continue to use these criteria – for reasons of cost-effectiveness, indifference, or discriminatory design – to consider and adopt race-conscious policies to make up for the race-linked flaws of these criteria.

This is appropriate not simply because it is just and brings the admissions process closer to a fair and even-handed merit system, but also because educational institutions, as critical shapers of societal values, bear a unique responsibility to take strong and sure steps to eliminate the persistent societal discrimination that continues to ostracize minority groups that have borne these burdens for so long. When educators have finally succeeded at that endeavor, we will know it by the elimination of the hardy and significant underrepresentation of particular groups. When that happens, we will also know that we have, collectively, gotten much closer to our shared vision of a land of truly equal opportunity.

ARGUMENT

I. LATINOS HAVE A DISTINCT IDENTITY SHAPED BY HISTORICAL EXPERIENCE.

Today, few would deny Justice Lewis Powell's assertion a quarter century ago that admitting students of

diverse backgrounds "may bring to a . . . school . . . experiences, outlooks, and ideas that enrich the training of its student body and better equip its graduates to render with understanding their vital service to humanity." *Regents of the Univ. of Cal. v. Bakke*, 438 U.S. 265, 314 (1978) (Powell, J.). Of substantially greater controversy is whether considering racial/ethnic background in arriving at a diverse student body is permissible. For those minority groups that continue to face the effects of persistent and long-term discrimination, consideration of race or ethnicity is plainly necessary to achieve the kind of diversity the nation's best schools seek.

If a university sought to include the outlooks and ideas of those raised in poverty, it would not be expected to obtain that particular diversity by considering the health condition of applicants. Such an approach would be an unsatisfactory substitute for direct consideration of socioeconomic status, even though there is assuredly some empirical correlation and some rational explanatory connection between poverty and health. The approach is unsatisfactory because poor health is not restricted to the poor, because many relatively poor children are nonetheless very healthy, and because health status measures only one element of the experience of being poor. Capturing the entirety of the experience requires directly considering income and wealth because they shape directly and multifariously the "experiences, outlooks, and ideas" of the students in question.

Race and ethnicity are similarly indicative of an agglomeration of experiences for which no proxy can adequately substitute. Because certain minority groups have an experience shaped by identification as different and formed by society's reactions to that perceived difference, only consideration of that racial/ethnic difference

could possibly capture the desired diversity. The Latino community – identified consistently from its forcible introduction to this nation as significantly distinct from the white majority – is one community whose members' experiences are profoundly influenced by race or ethnicity. While this shaping experience does not result in unanimity of opinion on any issue, it nonetheless influences personal development in a way different from and more complete than any other characteristic empirically or rationally connected to minority status.

Nothing in the Constitution requires state educational institutions to refrain from capturing this particular diversity as directly as universities seek to capture the perspectives of a range of socioeconomic statuses. The Constitution proscribes racial discrimination; it does not require the state to be willfully blind to the simple realities of American society. One of these realities is that racial/ethnic identity continues to shape the experiences of Latinos and other racial minorities.

A. The Latino Community Has Historically and Continuously Been Seen as Different from the Majority White Community.

Having recently become the nation's largest minority group,[2] Latinos may appear to some observers to be a group of relative newcomers to this nation – largely indistinguishable from previous waves of immigrants from

[2] The Census Bureau estimates that, as of July 2001, 37 million Latinos lived in the United States, comprising 13 percent of the population, and surpassing African Americans to become the largest minority group.

various parts of Europe – which has achieved its demographic and social significance solely as a result of voluntary decisions to migrate to the United States. This perniciously ahistorical view has a policy corollary, holding that Latinos should be treated no differently than those previous European immigrant groups and should be expected to overcome presumptively momentary spasms of anti-Latino sentiment without particular government assistance, and, in particular, without affirmative action. In addition, this understanding of Latinos implicitly characterizes them as devoid of any unique viewpoint, such as would be shaped by experiences appreciably different from other "immigrant ethnic groups."

In all respects, this impression of the Latino experience ignores the group's unique history and its experience of longstanding and continuous racial distinction and discrimination. The nation's two largest Latino subgroups share an experience that only two other racial minority groups claim – namely the forcible and involuntary introduction of the group to United States residency.[3] While the ranks of those forcibly introduced have been swelled by numerous subsequent immigrants, these newcomers join communities long viewed as non-white and subjected to discrimination on the basis of their difference.[4] Moreover,

[3] African Americans, introduced to this country as enslaved servants, and Native Americans, subjected to repeated conquest and genocide, have the most compelling histories of forcible introduction to the United States. All three groups – African Americans, Native Americans, Latinos – whose history lies in forcible introduction to the United States are also those facing the most severe underrepresentation in higher education.

[4] As the federal government's categorization of Latinos has developed, the group does include some European immigrants. The experience of Spanish and Portuguese Americans – who together

(Continued on following page)

immigrants from Latin America migrate to a nation whose political and economic interventions have more or less profoundly shaped the experience in their home countries.[5]

Latinos, whether immigrant or native-born, have long been subject to discrimination in this country, stretching back to at least the mid-nineteenth century. A half century ago, in the same term as *Brown v. Board of Education*, 347 U.S. 483 (1954) – generally acknowledged as the start of the modern civil rights era – Latinos celebrated their own victory in *Hernandez v. Texas*, 347 U.S. 475 (1954), the first Supreme Court holding that Latinos are a separate group for purposes of civil rights protections. Of course, this landmark Court decision merely acknowledged social reality for Latinos, who were treated as a different and second-class group wherever they lived in significant numbers. This discrimination continued despite the *Hernandez* decision, and the courts have had to intervene on numerous occasions to bring relief from anti-Latino discrimination.

This historical and continuing reality has forged a community with a unique, albeit variegated, experience influenced heavily by identity as Latino; most Latinos

comprise only a small percentage of the nation's Latino population – may more closely track that of other European immigrant groups. Of course, their experience also differs, if only because, by language and cultural affinity, they often settle in areas of large non-European Latino population, and they are often seen by non-Latino society as indistinguishable.

[5] *See generally* Walter LaFeber, *Inevitable Revolutions, The United States in Central America* (1993) (U.S. role in Central America and immigration as result of conflict in region); *Mexican and Central American Population and U.S. Immigration Policy* (Frank Bean, Jurgen Schmandt, and Sidney Weintraub eds., 1989) (examining effect of U.S. policy on immigration from Mexico and Central America).

bring a viewpoint to issues informed in significant part by the distinction of being Latino in the United States. Meanwhile, society at large continues to draw this distinction as well, too often using the ability to distinguish members of the group – by name, appearance, language – to engage in anti-Latino discrimination. Remedying that discrimination and including that uniquely-shaped experience both present strong reasons for the preservation of affirmative action in higher education.

1. The Two Largest Latino Subgroups Were Forcibly Introduced to the United States.

At least since President James Monroe's promulgation of his eponymous Doctrine in 1823, the United States has claimed a special dominion over the nations and people of Latin America. Sometimes benignly protective, other times exploitative, and most of the time a varying admixture of the two, this claimed dominion has long established a unique relationship between the United States and Latin America. Of course, this dominion has twice resulted in war and the United States' incorporation of large areas of previously Latin American territory – as well as significant numbers of inhabitants of incorporated territory. Thus, the United States-Mexico War resulted in 1848 in this country's incorporation of most of what is now the southwestern United States. Similarly, at the conclusion of the Spanish-American War, in which the Marines invaded Puerto Rico, the 1898 Treaty of Paris ceded Puerto Rico to the United States. After experiencing increasing autonomy under Spain just before the war, Puerto Rico instead became a U.S. colony and today continues under a unique commonwealth status.

Discussion and acknowledgment of the non-white status of the incorporated inhabitants surrounded these

military actions, which resulted in introducing the first large numbers of what are today the two largest Latino groups, Mexican Americans and Puerto Ricans.[6] Thus, for example, former Vice President John Calhoun argued on the floor of the Senate in 1848 that, "[t]o incorporate Mexico, would be the very first instance of the kind of incorporating an Indian race; for more than half of the Mexicans are Indians, and the other is composed chiefly of mixed tribes."[7] One early twentieth century academic pointedly concluded that, "[n]ot Latins but Indians dwell south of the Rio Grande." Ernest Gruening, *Mexico and Its Heritage* 69 (1928). Given the nation's then-prevalent views toward non-whites in general, and Indians in particular, there can be little doubt that Calhoun's statement and sentiment, and others similar, had an effect on the reputation and treatment of Mexicans in the United States. As one early historian and observer of the Latino community in the United States stated, "Mexicans were consistently

---

[6] The 2000 Census shows that Mexican Americans make up over 58 percent of the national Latino population, while Puerto Ricans make up another 10 percent. 2000 Census, SFI PCT 11.

[7] Cong. Globe, 30th Cong., 1st Sess. (1848) (Statement of Sen. Calhoun). Calhoun was not alone in focusing on race; war proponents used arguments about the backwardness of non-whites to justify aggression, while opponents voiced concerns about absorbing Mexico's large non-white population. *See* Frederick Merk, *Manifest Destiny and Mission in American History* 157-66 (1963); Reginald Horsman, *Race and Manifest Destiny* 231 (1981) ("Mexicans had been repeatedly attacked in the United States as a degenerate, largely Indian race unable to control or improve the territories they owned"); Gary A. Greenfield & Don B. Kates, *Mexican Americans, Racial Discrimination and the Civil Rights Act of 1866*, 63 Cal. L. Rev. 662 (1975) (examining several areas to conclude that Mexican Americans have been perceived as non-white).

equated with Indians by the race-conscious Anglo-Americans." Carey McWilliams, *North From Mexico* 209 (1948).

2. The Legal System Viewed Latinos as Distinct From Whites.

The United States legal system also recognized Latinos as distinct from the white community. For example, dissenting from the notorious holding in *Scott v. Sandford*, 60 U.S. (19 How.) 393 (1857), two justices of this Court cited the 1848 Treaty of Guadalupe Hidalgo as proof that the nation had previously exercised the power to accord citizenship to non-whites. Thus, Justice John McLean stated that "[u]nder the late treaty with Mexico, we have made citizens of all grades, combinations and colors." 60 U.S. (19 How.) at 533 (McLean, J., dissenting). Justice Benjamin Curtis cited the treaty with Mexico, as well as treaties with Choctaw and Cherokee tribes, in arguing that "by solemn treaties, large bodies of Mexican and North American Indians . . . have been admitted to citizenship." 60 U.S. (19 How.) at 586, 587 (Curtis, J., dissenting). This Court discussion was virtually contemporaneous with introduction of Mexican Americans to the country.[8]

Nonetheless, by the time of the landmark case of *Hernandez v. Texas*, both parties and Court seemed to

[8] Late in the nineteenth century, a Texas federal court permitted a Mexican American to naturalize, but only after noting that he might be "debarred by the strict letter of the law" providing for citizenship of whites only. *In re Rodriguez*, 81 F. 349 (W.D. Tex. 1897). One historian has explained that the case arose as part of an attempt at wholesale disenfranchisement of Latinos in San Antonio. Arnoldo De Leon, *The Tejano Community, 1836-1900*, at 33 (1982).

assume that Mexican Americans were legally considered simply a subgroup of "whites." In fact, this case and its antecedents are the exception that proves the rule. Before this Court's decision in *Norris v. Alabama*, 294 U.S. 587 (1935), adopting the "exclusion rule" permitting African Americans to offer evidence of longtime exclusion from juries as prima facie proof of discrimination, the state courts in Texas routinely excluded both African Americans and Mexican Americans on the basis of race.[9] Only after *Norris* did the state determine that Mexican Americans should be classified as "white"; this permitted Texas to argue that *Norris* did not apply to Mexican Americans, and that they continued to bear the burden of proving discrimination directly. For example, the state court in *Hernandez* held that, since the all-white grand and petit jury were "composed of members of his race, it cannot be said, in the absence of proof of actual discrimination, that appellant has been discriminated against. . . . " *Hernandez v. State*, 251 S.W.2d 531, 536 (Tex. Crim. App. 1952). Thus, the fact that the first major case involving Latinos to reach the Supreme Court implicitly considered them "white" emanated directly from state attempts to continue to discriminate against Latinos despite strengthened civil rights protections.[10]

[9] Thus, for example, *Carrasco v. State*, 95 S.W.2d 433 (Tex. Crim. App. 1936), involved a motion to set aside an indictment on grounds of "discrimination against the Mexican race on the part of the jury commission." *Id.* at 434-35. Although no Mexican American had been summoned to grand jury service in the preceding four years, the court found no violation because there was no direct evidence to show that "Mexicans were excluded or discriminated against solely because of race." *Id.* at 434.

[10] Indeed, the irony of the *Hernandez* case is best epitomized by the Jackson County clerk's testimony at trial that "I think we all understand that the Latin Americans are considered as white," delivered in a

(Continued on following page)

In other cases, Latinos were considered "white" for reasons similarly related to continued formal discrimination. Thus, for example, in *Mendez v. Westminster School District*, 64 F. Supp. 544 (S.D. Cal. 1946), *aff'd*, 161 F.2d 774 (9th Cir. 1947), in which the Ninth Circuit outlawed segregation of Mexican Americans in certain California school districts, the parties stipulated that Mexican Americans were part of the white race. *See Mendez*, 64 F. Supp. at 546. The plaintiffs likely sought the stipulation to avoid court precedent that, at the time, still permitted segregation between races under the "separate but equal" doctrine, and to avoid a California statute that permitted districts to establish "separate schools for Indian children, excepting children of Indians who are wards of the United States Government and children of all other Indians who are descendants of the original American Indians of the United States." Cal. Educ. Code § 8003 (repealed 1947). This statute would permit segregation of children descended from the Indians of Mexico; thus, plaintiffs' stipulation avoided a law directed toward segregation of Mexican Americans.[11]

---

courthouse with two men's toilets, "one unmarked and one marked 'Colored Men' and 'Hombres Aqui' (Men Here)." Transcript of Record at 28, *Hernandez v. Texas*, 347 U.S. 475 (No. 406); *Hernandez v. Texas*, 347 U.S. at 479-80.

[11] The reason that the districts agreed to the stipulation might lie in their argument, redolent of Texas in the jury exclusion context, seeking to establish that intra-racial discrimination was more acceptable than inter-racial discrimination: "If it be fallacious argument to contend that the [African] race is stamped with a badge of inferiority by separation, how can it be contended that one group of white persons are [so] stamped . . . simply because they are separated from other groups of white people in the public schools?" Appellant's Reply Br. to ACLU at 3, *Mendez* (No. 11310).

In sum, the legal system, like United States society, has traditionally viewed Latinos as non-white – different from whites of any European ethnicity.[12] The ultimate formal classification of Mexican Americans, the largest Latino subgroup, as "white" stems more from attempts to perpetuate entrenched discrimination against them in the face of increased court hostility toward inter-racial discrimination, than from any genuine affirmation of similarity between Latinos and white descendants of European immigrants.

3. The U.S. Census Has Long Recognized the Latino Community As Distinct From Other Racial Groups.

Further evidence of the Latino community's distinct identity and of society's longstanding treatment of the group as different from the white community lies in the Census Bureau's meandering efforts to arrive at an acceptable separate categorization of the group. In 1930, the Census listed a "Mexican" race category for the first time, instructing enumerators to use it "for all persons born in Mexico, or having parents born in Mexico, who are not definitely white, Negro, Indian, Chinese, or Japanese." Bureau of the Census, *Fifteenth Census of the United*

---

[12] While the above discussion focuses on Mexican Americans, Puerto Ricans, the second largest Latino subgroup, have faced consistent treatment as non-white. As one court has noted, "it must be acknowledged that Hispanics of Puerto Rican descent are not perceived to be 'white' by many Americans, regardless of their skin color." *Garcia v. Gardner's Nurseries, Inc.*, 585 F. Supp. 369, 375 (D. Conn. 1984). "Whatever else it may be, Puerto Rico is not a society that is preponderantly 'white' under conventional North American definitions of 'race.'" Jose A. Cabranes, *Citizenship and the American Empire* 98 n.475 (1975), *quoted in Garcia*, 585 F. Supp. at 375 n.3.

States, Population Bulletin, Second Series, U.S. Summary 7 (1931). This category was eliminated in 1940 when the instructions were that "Mexicans are to be regarded as white unless definitely of Indian or other nonwhite race." Bureau of the Census, *Sixteenth Census of the United States, Population, Part I* 296 (1943). This temporary classification as presumptively "white" was more likely the result of political pressure than indicative of any dramatic change in societal perception of Latinos.[13] Indeed, the Census Bureau eventually arrived at a means of recognizing the distinct Latino community while not selecting a single racial category.[14] Thus, in 1970 and in the succeeding three censuses, the Bureau has used a Hispanic-origin question separate from race.

The actions of Latinos filling out the census further echo this historical – 70 years and counting – and continuing official recognition of the Latino community as distinct from others. In the most recent two censuses, the overwhelming majority of all persons who identified their race as "other" have been Latino.[15] Thus, the Census has consistently recognized the Latino community as distinct, and has provided the opportunity for Latinos themselves

[13] "[T]he 1930 census definition of Mexicans evoked 'unfavorable reactions' from the Mexican government and the U.S. Department of State." Leo Grebler, Joan C. Moore & Ralph C. Guzman, *The Mexican People* 601 (1970).

[14] Of course, the use of a separate non-racial category also recognizes the fact that the Latino community includes many persons who identify as Latino, but also as black, white, or Native American.

[15] In 1990, over 9.5 million Latinos identified their race as "other"; they made up over 97 percent of those selecting "other" race. 1990 Census, STF1 P010. In 2000, nearly 15 million Latinos selected "other" race, making up over 96 percent of all persons who chose that classification. 2000 Census, SF1 P8.

to identify as separate from whites, blacks, or Asians – an opportunity taken by huge numbers.

4. Voting Shows a Distinct Latino Community.

The distinctness of the Latino community also appears strongly in the area of voting. In its 1975 expansion of the Voting Rights Act to reach language minorities, Congress expressly recognized that the Latino community has been the target of efforts to isolate it and to diminish its political power. Congress concluded that "[l]anguage minority citizens, like blacks throughout the South, must overcome the effects of discrimination as well as efforts to minimize the impact of their political participation." S. Rep. No. 94-295, at 25 (1975). Congress defined "language minority citizens" as "persons who are Asian American, American Indian, Alaskan Natives, or Spanish heritage." *Id.* at 24. The Senate Judiciary Committee stated that, among language minorities, "[p]ersons of Spanish heritage was the group most severely affected by discriminatory practices," and expressly noted that "[n]o evidence was received concerning the voting difficulties of other language groups," such as German, Italian, French, Polish, and Russian. *Id.* at 31.

It is not surprising, in light of these efforts to distinguish and discriminate against Latino voters, that they would vote cohesively as a group, and often against the desires and choices of white voters. In the 1990s, for example, California, where over 11 million Latinos now reside, held elections on three highly controversial initiatives, each showing strong polarization between Latinos and the majority white electorate. In 1994, Proposition 187, a proposal to restrict the rights of immigrants, received the support of 63 percent of white voters, while an astounding 77 percent of Latino electors cast a "No" vote.

Los Angeles Times Poll – California Exit Poll, Nov. 8, 1994. Two years later, Proposition 209, which restricted the use of affirmative action, garnered the support of 63 percent of white voters, while 76 percent of Latinos voted "No." Los Angeles Times Poll – General Election Exit Poll, Nov. 5, 1996. In 1998, white voters gave Proposition 227, which severely restricted bilingual education, 67 percent support, but Latinos voted "No" by a near mirror-image 63 percent. Los Angeles Times Poll – California Primary Election, June 2, 1998. Latinos have responded to their being treated as distinct and being subjected to discrimination by taking on a distinct identity in their voting habits.

5. Society Perceives Latinos as Distinct.

Media treatment of Latinos is central to societal views because it reflects commonly-held opinions, and also reinforces them as society consumes its stories and images. Unfortunately, the entertainment media has responded to Latinos with discriminatory and systematic exclusion, punctuated occasionally by mostly negative and limited portrayals of Latino characters. *See* Louis DeSipio, Lisa Navarette & Charles Kamasaki, *Out of the Picture: Hispanics in the Media* 2-3, 22 (1994) (Latinos have an "overwhelmingly negative stereotypical media image"); McCrae A. Parker, et al., *Fall Colors 2001-02 Prime Time Diversity Report* 3, 22 (2002) ("criminal" among likeliest Latino occupations). Representing merely two percent of primetime characters, Latinos are the most underrepresented group on television as compared to national population. *Id.* at 14. Moreover, the country's media capital, Los Angeles, has a population that is 47 percent Latino, and the country's second major media center, New York, also has a large Latino population, 27 percent. 2000 Census PL94-171 P2. Not coincidentally, these cities are the fictional settings for large

numbers of television shows and movies. It is in this real-word context, brimming with Latinos, that the media's exclusion of Latinos takes place. This exclusion can hardly be accidental as the entertainment industry has presented fabricated social interactions, purportedly taking place in Los Angeles or New York, yet bereft of Latinos. *See* Harry P. Pachon, et al., *Missing in Action: Latinos In and Out of Hollywood* 12 (1999). When Latinos are represented, the industry portrays them in cameo roles with negative implications, such as drug dealers, gang members, or unruly students. *Id.*; Louis DeSipio, *Talking Back to Television: Latinos Discuss How Television Portrays Them and the Quality of Programming Options* 8-9 (1998). Moreover, in media advertising, corporations similarly behave based on demeaning and damaging stereotypes against Latinos. *See, e.g.*, Civil Rights Forum, *When Being Number One Is Not Enough: The Impact of Advertising Practices On Minority-Owned & Minority-Formatted Broadcast Stations* 12 (1999) (radio advertisers "desire to disassociate a company's image" from Latino consumers). While non-Latinos are influenced by this exclusion and negative portrayal, Latinos also view these images – with a unique perspective as the ignored group. *Id.* This exclusion from the highly influential media forms a key part of the experience of Latinos in the United States.

Social scientists have confirmed what turning on the television would suggest – whites notice and treat Latinos as distinct. Non-Latinos continue to associate negative stereotypes with Latinos, such as being more violent, more criminal, dirtier, less intelligent, and less hard-working. Tom W. Smith, *Intergroup Relations in a Diverse America* 38 (2001); Linda A. Jackson, *Stereotypes, Emotion, Behaviors, and Overall Attitudes Toward Hispanics by Anglos* (1995). Similarly, non-Latinos grossly overestimate the

percentage of Latinos who live in poverty, who receive welfare, and who immigrated illegally. Michael A. Fletcher, *Latinos See Bias in Elgin's Fight Against Blight; Tensions Rise Over Crackdown on Crowded Housing*, Washington Post, May 29, 2000 (excerpting poll results). In fact, non-Latinos are so cognizant of the presence and distinct identity of Latinos that non-Latinos can remember the nature and quality of their lifetime social contacts with Latinos. Smith, *supra*, at 12-13; Jackson, *supra*.

Given their continued experience of disparate treatment, Latinos unsurprisingly also view themselves as distinct. The majority of Latinos would "prefer to identify their race as 'Latino' or 'Hispanic'" to distinguish themselves from whites, African Americans, and Asian Americans. Kaiser Family Foundation, Pew Hispanic Center, *2002 National Survey of Latinos* 23 (2002). Latinos also identify racial prejudice as the "most important" issue facing their group. The Latino Coalition, *2001 Latino Poll* (2001). In addition, as a group, Latinos strongly depart from many views held by the rest of society. For example, Latinos have more positive attitudes towards immigration and language rights as compared to non-Latinos, and less positive perceptions of fairness in law enforcement. Smith, *supra*, at 15-16; Yuen J. Huo and Tom Tyler, *How Different Ethnic Groups React to Legal Authority* 30 (2000). All of society – Latinos and non-Latinos – consistently views Latinos as a separate group.

B. Because of Group Identity, Latino Lawyers are More Likely to Serve the Latino Population.

Latinos, like all Americans, face important legal issues requiring counsel. Yet, Latinos often lack access to legal counsel.[16] There are surely many reasons, but among the most obvious is economics; fee rates price attorneys far beyond the resources of much of the Latino population. Thus, lawyers who choose to serve Latinos must be willing to make economic sacrifices. Due to cultural affinity among Latinos, driven in part by a shared history of discrimination, Latino lawyers are more likely to make these sacrifices and work among Latino clients. Richard O. Lempert, David L. Chambers, & Terry K. Adams, *Michigan's Minority Graduates in Practice: The River Runs Through Law School*, 25 Law & Soc. Inquiry 395, 401 (2000). Yet, even in an era of affirmative action, Latino lawyers are in extremely short supply. *See* Miguel A. Mendez & Leo P. Martinez, *Toward A Statistical Profile of Latina/os in the Legal Profession*, 13 Berkeley La Raza L.J. 59, 65 (2002) (Latinos were 9 percent of national population in 1990, but only 2.49 percent of lawyers). Even if these two facts – few Latino lawyers and few lawyers for Latino clients – could not be definitively linked, it seems fair to assume that Latino clients would suffer the most damage from a further decrease in the number of Latino lawyers.

---

[16] In California, Latinos are three times more likely than whites to be severely underserved by the legal profession. California Commission on Access to Justice, *The Path to Equal Justice in California*, 3-9 (2002) (defining income levels of underserved); 2000 Census SF 3 P87, P159H, P1591 (establishing ethnic proportions for those income levels in California).

C. The Latino Community Shares Common Characteristics of Value to Law School Diversity.

Underlying the treatment of Latinos as a distinct group is the undeniable truth that the community shares many characteristics that make it identifiable and separate. Treatment as different over the many years of Latino presence in this country has in turn served to reinforce further some of these identifiable traits and experiences. Many of the most important of these Latino characteristics are catalogued in the Latino Organizations' *amici curiae* brief, filed by Munger, Tolles & Olson and the Puerto Rican Legal Defense and Education Fund (PRLDEF) in *Gratz v. Bollinger*. We will not repeat that discussion here. Of course, the value of including Latinos with these experiences in the law school setting is as high as it is in the undergraduate context.

For example, the Latino Organizations' *Gratz* brief points out that most Latino extended families include members who are bilingual or monolingual Spanish-speaking. Exposure to this language-minority experience has obvious application to legal issues. This Court has dealt with language issues in many contexts, such as education, *see Lau v. Nichols*, 414 U.S. 563 (1974); jury exclusion, *see Hernandez v. New York*, 500 U.S. 352 (1991); and government services, *see Arizonans for Official English v. Arizona*, 520 U.S. 43 (1997). Federal and state appellate courts have addressed language in other contexts, such as employment, *see Garcia v. Spun Steak Co.*, 998 F.2d 1480 (9th Cir. 1993); *Garcia v. Gloor*, 618 F.2d 264 (5th Cir. 1980); immigration, *see El Rescate Legal Servs. v. Executive Office of Immig. Review*, 959 F.2d 742 (9th Cir. 1991); and consumer protection, *see Ramirez v. Plough, Inc.*, 25 Cal. Rptr. 2d 97 (Cal. 1993). Language

arises in a broad array of legal contexts; students acquainted with the experience of language minorities could provide valuable insight.

Similarly, Latino extended families frequently include persons of varying immigration statuses. As the Latino Organizations' *Gratz* brief explains, immigration issues implicate numerous areas of academic endeavor. Law is plainly one of the most prominent of these areas because immigration itself is so heavily regulated. A short seven years ago, two congressional acts dramatically overhauled our immigration regulatory scheme. *See* Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (1996); Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009 (1996). The ink on court precedent interpreting these laws has only begun to dry, yet new legislation to address security concerns has already been enacted. As questions of the proper balance between security and privacy rights percolate through the courts, it is evident that immigration will form a central part of any law school curriculum in the next decade. The presence of Latinos familiar with the human side of these issues could greatly enhance classroom discussion.

With respect to other Latino common characteristics discussed in the Latino Organizations' *Gratz* brief, the nexus with law school discussion is also apparent. As a quintessential element of daily human interaction, employment issues, as well as concerns of wealth distribution and poverty, will always form a central element of legal discourse. From *Brown* to these very Michigan cases, the importance of education – and related equity concerns – is manifest in this Court's own docket.

Yet, the most important common Latino characteristic is exposure to racial discrimination. The Latino Organizations' *Gratz* brief catalogues the breadth of this community experience, reinforcing the description above of the historical and continuing treatment of Latinos as distinct from the white majority. Latinos have been subjected to consistent disparate treatment as a part of their being thus singled out. It is this particular Latino experience that would most be missed if Latinos are excluded from law schools. As explained above, it is also this experience that is at greatest risk if reasonable race-consciousness is no longer permitted in admissions. Abandoning this longstanding approach threatens to further isolate and distinguish the Latino community by excluding it from prestigious institutions of higher education. This greater isolation of a growing minority community is, in turn, the surest road to societal instability.

II. PUBLIC EDUCATION BEARS A SPECIAL RESPONSIBILITY TO ERADICATE SOCIETAL DISCRIMINATION.

Among the most frequently excerpted portions of this Court's unanimous opinion in *Brown v. Board of Education* is the paragraph explaining why "[t]oday, education is perhaps the most important function of state and local governments." 347 U.S. at 493. Chief Justice Earl Warren's eloquent description of education as critical both to the individual and to the community finds many comrades in Court annals. "This theme, expressing an abiding respect for the vital role of education in a free society, may be found in numerous opinions of Justices of this Court written both before and after *Brown* was decided." *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 30

(1973) (citing cases). Education plays a vital role in "'inculcating fundamental values necessary to the maintenance of a democratic political system'" as well as in "provid[ing] the basic tools by which individuals might lead economically productive lives to the benefit of us all." *Plyler v. Doe*, 457 U.S. 202, 221 (1982) (quoting *Ambach v. Norwick*, 411 U.S. 68, 77 (1976)).

Education's "fundamental role in maintaining the fabric of our society," *id.*, embraces both a capability and an obligation to address fundamental social issues, with respect to both the individual and the community. Thus, societal discrimination bears an intimate relation to public education. State-operated education bears an undeniable responsibility for the continued existence of such discrimination, which reflects, at minimum, a failure to inculcate successfully one of our nation's central ideals – equal treatment regardless of race – and likely also reflects the perpetuation of pernicious values favoring discrimination during the era when racial oppression was rampant. At the same time, state-run educational institutions are peculiarly well-situated to take steps to eliminate societal discrimination and to promote the equality that would obtain in its absence. A necessary corollary of these principles is that a state-run university's interest in achieving student diversity and in remedying discrimination are closely-related.

The inculcation of fundamental community values, such as values of non-discrimination, is a long-term endeavor, and a state, like Michigan, that provides public education from kindergarten through doctorate, must view it as a continuing enterprise at all levels. As post-secondary education becomes more and more a universal experience, a state could not cease its teaching of civic values at the twelfth grade without surely failing in its

vital role. Moreover, the teaching of anti-discrimination values necessarily requires the presence of persons, such as Latinos, who have been and remain the frequent targets of societal discrimination. Through academic discourse and extracurricular experience, the presence of such diversity – racial diversity – plays a critical role in fulfilling education's fundamental mission of "transmitting 'the values on which our society rests.'" *Plyler*, 457 U.S. at 221 (quoting *Ambach*, 411 U.S. at 77). This, in turn, will assist the state to eliminate, in the future, societal discrimination inside and outside of academe.

From the perspective of the individual, a Latino could fairly conclude – again because of the implicit failure in a primary educational mission – that state educational institutions are largely to blame for any societal discrimination affecting her family and herself. By recognizing this responsibility and by ensuring that the effects of discrimination are muted, if not eliminated, in student admissions, public institutions of higher education take an important step toward redressing discrimination and toward ensuring its full demise in the future. Failure to take this step misses a critical opportunity. As this Court has stated, "by depriving the children of any disfavored group of an education, we foreclose the means by which that group might raise the level of esteem in which it is held by the majority." *Plyler*, 457 U.S. at 222. This conclusion applies with equal vigor to higher education today. By increasing minority access to the most-esteemed professions, the state strikes a strong blow for the future elimination of societal discrimination.

This Court's consistent recognition of the crucial role of public education in maintaining and transmitting community values, and in equipping individuals to contribute to society, epitomizes an obligation to eradicate

discrimination – whether or not it can be traced more or less sharply to a particular institution. Societal discrimination stems directly from failures of the state-run educational system. As a result, public educational institutions bear a special responsibility and capability to foster a society that rejects all remnants of racial discrimination against minorities. They must be free to fulfill their responsibility and to channel their capability toward that noble end.

III. MICHIGAN LAW SCHOOL CONTINUES TO DISCRIMINATE AGAINST LATINO APPLICANTS.

The Michigan Law School has an even more specific responsibility to remedy discrimination. To this day, the Law School continues to subject applicants to discriminatory criteria. In its admissions process, the "Law School evaluates a composite of the applicant's Law School Admissions Test and undergraduate grade-point average." *Grutter v. Bollinger*, 288 F.3d 732, 736 (6th Cir. 2002). This emphasis on "numbers" might superficially appear to be innocuous, but the Law School's LSAT and grade point average (GPA) criteria both have a debilitating effect on Latino applicants. Discriminatory outcomes based on these two criteria have been the subject of rigorous academic and empirical analysis. The discriminatory effect of the LSAT against Latinos is well-documented. *See, e.g.*, Daria Roithmayr, *Barriers to Entry: A Market Lock-In Model of Discrimination* 86 Va. L. Rev. 727, 762 (2000); William C. Kidder, Note, *Does the LSAT Mirror or Magnify Racial and Ethnic Differences in Educational Attainment?: A Study of Equally Achieving "Elite" College Students*, 89 Cal. L. Rev. 1055, 1073-74 (2001). Similarly, Latinos are disadvantaged by formulaic evaluations of GPAs because there is a gap between the GPAs of Latinos as compared to

whites. *See id.* at 1097-98. Therefore, through its use of LSAT scores and GPA, the Law School systemically downgrades Latino applicants across two different criteria.

Yet, despite their discriminatory effect, GPA and LSAT scores are the linchpin of the admissions process. The Law School creates both a composite and an index based solely on the results of these two criteria. "This composite can be visualized as a grid with standardized test scores on the horizontal axis and grade-point average on the vertical axis. . . . Constructed in this manner, the highest combination of test score and undergraduate grade-point averages are found in the grid's upper right-hand corner." *Grutter v. Bollinger*, 137 F. Supp. 2d 821, 826.

The Law School's policy is clear: "Bluntly, the higher one's index score, the greater should be one's chances of being admitted. The lower the score, the greater the risk the candidate poses." *Id.* (quoting the Law School's admissions policy). True to the Law School's word, in this grid or composite, an applicant's probability of being admitted increases substantially as the applicant moves toward the grid's upper right hand corner. *Id.* While it is true that a high composite score will not guarantee admission, *id.*, a low score will virtually guarantee rejection. "Of the 966 offers of admission made in 1991, 843 (87%) were made to applicants who fell within the nine cells closest to [the top right-hand] corner." *Id.*

Although the LSAT and GPA form the basis of most admissions decisions, the Law School reviews every individual application and considers "soft variables" like enthusiasm of recommenders, quality of undergraduate institution, quality of the applicant's essay, residency, leadership, and work experience, unique talents or interests, and areas and difficulty of undergraduate course selection. *Grutter*, 288 F.3d at 736. Nevertheless, the Law

School has defined only two limited circumstances where the "soft variables," combined with other factors might sometimes outweigh a relatively low composite score. *Id.* Only one of these involves considering race, as one of many elements in achieving diversity. Thus, despite their discriminatory effect, "numbers" largely drive the Law School's admissions process.

In addition, some of the "soft variables" that the Law School considers further amplify the discriminatory effect of the LSAT and GPA. For example, Latinos often attend less prestigious universities or begin their careers in community colleges. Consequently, regardless of academic performance, Latinos may be further handicapped by the Law School's emphasis on automatically rewarding students who attended prestigious undergraduate universities.

Given its interest in maintaining a diverse student body, the Law School has a long history of recognizing and debating the discriminatory effect of its admissions policies. As early as 1970, the dean recognized that Law School admissions criteria had a discriminatory effect on minorities and attempted to control for this effect by admitting significant numbers of underrepresented minorities. *Grutter*, 137 F. Supp. 2d at 830 n.8. Similarly, throughout the 1980s, the Law School faculty debated the extent to which the Law School should mitigate the discriminatory effect of the admissions policy in order to admit significant numbers of minorities.

Therefore, in 1992, when the Law School adopted its current admissions policy, it is a virtual certainty that officials completely understood the magnitude of the discriminatory effect that they chose to impose on Latino applicants. Three directors of admissions, covering 1979 to 1999, understood that the Law School's admissions policies

worked to exclude Latino applicants from being admitted. Allan Stillwagon, director of admissions from 1979 to 1990, testified that, given its criteria, the Law School had to consider race because otherwise very few minority applicants would have been admitted. *Id.* at 831. Similarly, Dennis Shields, the Law School's director of admissions from 1991 to 1998, and his successor, Erica Munzel, explicitly acknowledged the discriminatory impact of LSAT scores and undergraduate GPAs. *Id.* at 838. Both testified that in order to achieve a diverse student body, the Law School controlled for the LSAT's and GPA's discriminatory impact. *Id.*

Thus, knowledgeable admissions officers recognized the extent to which the Law School's discriminatory factors would cripple Latino applicants absent affirmative action. The federal circuit court agreed, concluding that "eliminating race as a factor in the admissions process would dramatically lower minority admissions." *Grutter*, 288 F.3d at 737. Without affirmative action, Latinos, African Americans, and Native Americans would have constituted merely four percent of the Law School's entering class in 2001, according to the Law School's statistical expert. *Id.* Dean Jeffrey Lehman, the dean of the Law School from 1994 to the present, concurred that the Law School's own discriminatory criteria might reduce underrepresented minorities to "token" levels if race were eliminated as a factor. *Id.* at 738.

Without the mitigating effect of affirmative action, Latino representation at the law school would be devastated – to the point of virtual exclusion. Latinos would represent perhaps two percent of the total class. *Id.* This minuscule number reflects the magnitude of the Law School's discriminatory admissions criteria. Moreover,

these dismal admission rates for Latinos, absent affirmative action, would undoubtedly create a prima facie violation under regulations implementing Title VI of the Civil Rights Act of 1964. 34 C.F.R. § 100.3(b)(2).

Finally, the Law School has imposed criteria which have poor predictive ability, in contrast to their demonstrable discriminatory effect. Neither the LSAT nor GPA accurately predict success in law school, nor do they predict success beyond law school. Lani Guinier, *An Empirical Study Confirmative Action*, 25 Law & Soc. Inquiry 565, 569-71, 573 (2000). In the end, the Law School's actions in mitigating against these discriminatory factors speaks volumes. The Law School implicitly recognizes that its admissions policies simultaneously discriminate against Latinos while failing to identify the best students or future lawyers. In this context, affirmative action is imperative. Scores of Latinos were admitted to the Law School as a result of affirmative action and proved to be just as able and qualified as their classmates in the Law School classroom and in the profession.

CONCLUSION

Viewpoints formed through the experience of discrimination – in any of its multiple facets – on *the basis of race*, can only be captured through reasonable consideration of race. Members of the Latino community share this experience. Public educational institutions bear a responsibility to reflect these viewpoints in their student bodies for three reasons – to enhance diversity; to take strong steps to eradicate societal discrimination; and to adjust for the continued use of discriminatory admissions criteria. Affirmative action must be preserved for the sake of

Latino students and for the sake of this nation's prosperous future. The Court should affirm the Sixth Circuit's decision in favor of Michigan Law School.

Respectfully submitted,

ANTONIA HERNANDEZ
(*Counsel of Record*)
THOMAS A. SAENZ
VICTOR VIRAMONTES
MEXICAN AMERICAN LEGAL DEFENSE
AND EDUCATIONAL FUND
634 S. Spring St., 11th Fl.
Los Angeles, CA 90014
Ph: (213) 629-2512

FOSTER MAER
PUERTO RICAN LEGAL DEFENSE
AND EDUCATION FUND
99 Hudson Street, 14th Fl.
New York, NY 10013
Ph: (212) 219-3360

Statements of Interest

American GI Forum of the United States

The AGIF is the only Hispanic congressionally chartered veterans family organization with more than 500 chapters in the United States and Puerto Rico. The AGIF has been actively involved with veterans' issues, education and civil rights since 1948. Our outreach and educational programs promote pride, Hispanic recognition and accomplishment; provide leadership, networking opportunities, scholarships and educational attainment, and employment training and advancement.

Association of Hispanic Health Care Executives

The Association of Hispanic Healthcare Executives (AHHE) is dedicated to promoting access to healthcare for the Hispanic community. With a mission of promoting the availability and development of healthcare executives dedicated to enhancing the quality of and access to healthcare for the Hispanic community in the United States, we also are a founding member of the Institute for Diversity in Health Management, a subsidiary of the American Hospital Association. The Association of Hispanic Healthcare Executives was founded in 1988 as a national voluntary organization seeking to foster programs and policies to increase the presence of Hispanics in health administration professions. You can view our programs and activities by visiting our website: www.AHHE.org.

Association of Latin American Law Students

The Association of Latin American Law Students is dedicated to fostering the involvement of Latin Americans in the legal profession, as well as advocating for the needs of Latin American law school students. This dedication is

evident in our mission and in the other programs ALALS provides to the law school community.

Chancellor's Committee on the Status of Latinos (CCSL), University of Illinois, Chicago

Our organization supports Affirmative Action and the brief.

We are the main campus organization of faculty and staff with student representation that addresses issues of concern to the Latino community on campus, including issues of recruitment and retention of Latino students.

Cuban American National Council, Inc.

CNC is the largest U.S. non-profit Hispanic organization developing affordable housing for low-income seniors, and is a pioneer in providing alternative education to at-risk students. Other Council programs include daycare and developmental services for infants/toddlers of adolescent mothers, and employment and training services for unskilled, undereducated recent immigrants, and individuals who face an English language barrier.

We support the University of Michigan admission policy because it helps Latino & other minorities take advantage of education opportunities they could not otherwise.

This or similar policy(s) are necessary in the face of thousands of cases of discrimination against minorities in the United States, and the disadvantages of Latinos vis-à-vis other social groups regarding education, income, college graduate rates, and others.

Dominicans 2000, Inc.

Dominicans 2000 is a non-profit organization established to implement projects designed to address the advancement of Dominicans and the progress of Latinos and others in the United States. The means of providing such advancement includes, creating networks, organizing forums and forming committees to conduct research and implement programs.

An affirmative action program creates opportunities for individuals who otherwise would not be able to attend college. As an organization that assists young Latinos through the application process for colleges and universities, D2000 supports the creation and implementation of affirmative action policies that truly create opportunities for youth of color.

Dominican-American National Roundtable

The Dominican-American National Roundtable (DANR) is a non-partisan, non-profit corporation seeking to bring together the different voices of all people of Dominican origin in the United States. DANR is a national forum for analysis, planning, and action to advance the educational, economic, legal, social, cultural, and political interests of Dominican Americans. DANR aims to ensure for U. S. Dominicans the full exercise of the rights and freedoms guaranteed in the Constitution of the United States of America.

With those objectives in mind, DANR is committed to enriching the quality of life in the United States by highlighting the contributions of Dominicans to the larger American society.

Hands On New York

As requested, Hands On New York, Inc. was formed exclusively to provide services that will improve the quality of life for low-income individuals and families in New York City.

We strongly believe that Affirmative Action is one of the greatest plans created by mankind because it allows minorities the opportunities that otherwise would have never been given. Affirmative Action must be maintained "By Any Means Necessary." It's the future of millions of minorities.

Hispanic Association of Colleges & Universities (HACU)

The Hispanic Association of Colleges and Universities (HACU) has championed the higher education success of the nation's youngest and largest ethnic population. The formal mission of HACU is to promote the development of member colleges and universities; improve access to and the quality of postsecondary educational opportunities for Hispanic students; and, to meet the needs of business, industry and government through the development and sharing of resources, information and expertise.

A decision against college admissions policies in place since the landmark Supreme Court *Regents of the University of California v. Bakke* decision in 1978 would create an immediate crisis for Hispanics, who already suffer the lowest college entrance and completion rates among all major U.S. population groups. HACU supports the University of Michigan in promoting diversity in college admissions policies.

Labor Council for Latin American Advancement (LCLAA)

The Labor Council for Latin American Advancement (LCLAA) is a national organization representing the interests of approximately 1.7 million Latino trade unionists in the United States and Puerto Rico. Founded in 1973, LCLAA builds coalitions between the Latino community and Unions in order to advance the civil, economic and human rights of all Latinos.

Numerous surveys and studies show the most common occupations for Latinos as service workers, precision production, and transportation. Latinos continue to occupy the lowest sector jobs and non-management positions due to an inability to access the educational resources to improve the lives of their families. Race, gender, language and ethnic discrimination coupled with an inability to access the necessary academic resources to improve their economic standing continue to act as a barrier to acquiring high skilled professional and management necessary to help their children access higher education. Our society's professional workforce should be reflective of the population it serves. As 13% of the U.S. population, Latinos should have a fair and equitable opportunity to serve society's needs in professional and management positions.

Labor Council for Latin American Advancement (LCLAA)-Massachusetts Chapter

LCLAA is an AFL-CIO constituency group that represents the interests of the Latino community to organized labor and to public officials. Affirmative action has and will be a direct benefit to our membership and families.

Latino Honor Society

The Latino Honor Society, a student association of the Borough of Manhattan Community College, is in support of the affirmative action policies currently in place protecting the rights of underprivileged individuals.

Latino Issues Forum

Latino Issues Forum is a non-profit public policy and advocacy institute committed to advancing the interests of Latinos, including Mexican Americans, in higher education, economic development, health care, public policy planning, and consumer protections in telecommunications, energy and preventing insurance redlining, fraud and marketing abuse. Its Board of Directors represents a cross-section of the Latino community, including nationally recognized Latino leaders, organizational presidents, legal and academic scholars, community leaders and private sector executives. Latino Issues Forum has a particular concern with this case because of its impact on diversity in institutions of higher education.

League of United Latin American Citizens (LULAC)

The League of United Latin American Citizens is the largest and oldest Hispanic membership organization in the United States. With over 115,000 members in virtually every state of the nation, LULAC advances the economic condition, educational attainment, political influence, health and civil rights of Hispanic Americans. For more than 73 years, LULAC's members have sought increased opportunities in higher education for Hispanic students through the desegregation of public schools, reaching parity in school funding, the provision of scholarships, educational counseling and strong affirmative action

programs. We believe that affirmative action programs like those in place at the University of Michigan are essential to overcoming the tremendous obstacles that college-bound Latino students are faced with.

Mexican American Legal Defense and Educational Fund (MALDEF)

The Mexican American Legal Defense and Educational Fund (MALDEF) is a national civil rights organization established in 1968. Its principal objective is to secure, through litigation, advocacy, and education, the civil rights of Latinos living in the United States. The defense of lawful voluntary affirmative action programs is in the best interests of the Latino community, and MALDEF has taken strong positions in support of affirmative action in education through all of our activities. Thus, MALDEF has a strong interest in this case.

National Association for Bilingual Education (NABE)

NABE is a non-profit national membership organization founded in 1975 to promote educational excellence and equity for language minority students. NABE supports programs that teach children with limited English proficiency, English while helping them attain continued academic excellence.

National Association of Latino Elected and Appointed Officials

The National Association of Latino Elected and Appointed Officials was established in 1976 to promote the full participation of Latinos in the civic life of the United States. NALEO is a national non-profit membership organization whose members include officials from all

parties and levels of government and their supporters. NALEO is committed to ensuring that all Americans have the opportunity to realize their full potential, which requires unhindered access to education and employment.

NALEO believes that affirmative action, properly implemented, is neither a system of mandatory quotas or set-asides, or the granting of preferences to unqualified people. NALEO believes affirmative action is about opening up the system to all and providing a climate where all persons have a chance to succeed according to their efforts and abilities. Opening the system in this fashion often requires recruitment and training efforts, especially for those historically denied opportunity.

National Conference of Puerto Rican Women (NACOPRW)

NACOPRW as a non-profit/non partisan organization that promotes the full participation of Puerto Rican women and other Hispanics in the social, economic, political life in the U.S., we support this affirmative action amicus brief.

National Council of La Raza

The National Council of La Raza (NCLR) is a private, nonprofit, nonpartisan organization established in 1968 to reduce poverty and discrimination and improve life opportunities for Hispanic Americans. NCLR works toward this goal through two primary, complementary approaches: capacity-building assistance to support and strengthen Hispanic community-based organizations and applied research, policy analysis, and advocacy.

NCLR recognizes that if the University of Michigan's affirmative action admissions policies are found unconstitutional, the nation's minorities will be denied equal

opportunities to institutions of higher education and consequently, lifelong opportunities. NCLR stands in support of Affirmative Action policies not only for the sake of minority communities, but also for the sake of a better United States.

National HEP-CAMP Association

The National HEP-CAMP Association represents the High School Equivalency Programs and College Assistance Migrant Programs across the country. HEP helps migrant students who have dropped out of high school get their GED. CAMP assists migrant students in their first year of college with academic, personal, and financial support. The Association recognizes the invaluable role that affirmative action has played in providing access to postsecondary education for the community that we serve. Our students are among the most educationally disadvantaged groups in the nation. Moving from school to school, state-to-state, migrant students are often unable to demonstrate the same academic credentials of their more advantaged peers. Nevertheless, as our programs demonstrate, given the access to education, migrant youth are capable of achieving to the highest levels. Outlawing affirmative action would place yet another barrier to a better future through education before our students. Percentage plans are a particularly poor option for migrants, as our youth change schools frequently, and thus, are unlikely to qualify for the top percentage spots in their schools.

National Hispanic Council on Aging

The NHCoA is a network of advocate organizations. It is a community-building network designed to improve the lives of older Latinos, families & communities. Older Latinos' education levels are extremely low, therefore levels of

poverty are extremely high. Education is the one avenue of opportunity to get out of the cycle of poverty, illiteracy and dependence. Education must begin early in life – affirmative action is crucial for our communities to get our of the "working poor" category.

National Hispanic Medical Association/ Hispanic-Serving Health Profession Schools

The National Hispanic Medical Association/ Hispanic-Serving Health Profession Schools' mission is to improve the health of Hispanics and other underserved groups.

It chooses to support the affirmative action amicus briefs to continue to increase diversity in education and to increase opportunities for Hispanics to join the medical profession, which eventually leads to, expanded access to health care in the U.S. and to improved health of the nation.

National Puerto Rican Coalition, Inc.

NPRC is a national non-profit organization representing the interests of over 7 million Puerto Rican U. S. citizens on the mainland and in Puerto Rico. NPRC's mission is to systematically strengthen and enhance the social, political and economic well being of Puerto Ricans throughout the United States and in Puerto Rico, with a special focus on the most vulnerable.

NPRC is very concerned about the under-representation of Puerto Ricans/ Latinos in colleges and universities in the U. S.

National Puerto Rican Forum, Inc.

National Puerto Rican Forum, Inc. is a 46 year-old Community Based Organization whose mission is to improve

the socio-economic condition of Latinos and other minorities through education and employment.

From our vantage point, we see and deal with the outcomes of the education system when it fails. We believe that affirmative action is an excellent tool to equip all people, especially minorities, with the skills necessary to overcome barriers to full participation in the great American enterprise.

Nosotros

The Latino arts organization NOSOTROS, founded by actor Ricardo Montalban, supports affirmative action in that college trained performing artists of color need to learn and develop their talents and have access to the arts institutions of higher education as a necessary part of their development.

PR Project, Inc.

PR Project, Inc. is a multimedia organization that leverages new media technologies for the benefit of the Latino community and its artists. We are interested in having our children enter schools that will provide them with the best education, skills and networking opportunities the finest schools in this country offer. It is in the interest of the United States as a whole to guarantee that all our young men and women are given opportunities to discover and develop their talents without regard to race, ethnicity, class, religion or gender. PR Project, Inc. is committed to affirmative action and the good results it historically has produced.

Puerto Rican Legal Defense and Education Fund (PRLDEF)

Through litigation, policy analysis and education, the Puerto Rican Legal Defense and Education Fund (PRLDEF) works to secure, promote and protect the civil and human rights of the Puerto Rican and wider Latino community.

Established in 1972, the Puerto Rican Legal Defense and Education Fund, a privately funded 501(c)(3) nonprofit and nonpartisan organization, accomplishes its work through its three program divisions: Litigation, Education and, as a result of our merger with the Institute for Puerto Rican Policy (IPR), the new Policy Division.

United States Hispanic Chamber of Commerce (USHCC)

The United States Hispanic Chamber of Commerce (USHCC) advocates, promotes and facilitates the success of Hispanic businesses throughout the United States and Puerto Rico. Being the leading proponent of Hispanic-owned businesses, the USHCC supports the position of the University of Michigan and to uphold its policies of affirmative action in both its undergraduate and graduate programs. The elimination of these programs will ultimately damage the future workforce of this country.

United States Hispanic Chamber of Commerce (USHCC) Foundation

The United States Hispanic Chamber of Commerce (USHCC) Foundation is committed to giving Latino youth alternatives for life preparation and life-long learning by developing and implementing initiatives and educational campaigns to awaken and nurture the entrepreneurial spirit of Latino youth. To fulfill this mission, the USHCC

Foundation builds alliances, partnerships and collaborative efforts to link Latino youth to educational programs that will develop and enhance their critical thinking and entrepreneurship skills.

With the elimination of affirmative action programs in both undergraduate and graduate schools, fulfillment of the Foundation's mission will not be possible. This elimination will severely affect the educational attainment, advancement and future success of our Latino youth and the economic prosperity of this nation. The USHCC Foundation strongly supports the position of The University of Michigan.